1941 **File No.** O. Wakf/41

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Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Musalman Wakf Act, 1923.

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Section 6C(1) of the Musalman Wakf Act, 1923 (XLII of 1923) as amended by Bom. XVIII of 1935 empowers the court to hold an enquiry 'either on its own motion or upon the application of any person claiming an interest in a wakf'. These powers are very wide and if the court is willing to hold an enquiry it can do so even on its own motion. i. e. without any application from any body. The court can also act upon the application of any person claiming an interest in a wakf and for the purposes of action under section 6C(1) it would be immaterial whether the person claiming such interest has or has not actually any personal interest of his own in any particular wakf and the discretion of the court to exercise its powers under section 6C(1) would not be affected by the presence or absence of any such interest in the applicant himself. As regards practical difficulties in the working of the Mussalman Wakf Act, 1923, in Bombay, attention is invited to the Remembrancer of Legal Affairs' U. Rs. to R. D. No. 6844, dated the 8th September 1938 and No. 7824, dated the 2nd September 1940.

/sd/-
Remembrancer of Legal Affairs.

U. R. to the R.D. No. No. 932 dated the 31st January, 1941.

MRR.

The first question for consideration of the R. L. A. is whether action under section 218 of the Bombay Municipal Boroughs Act, 1925 can be taken against the Malegaon Municipality for failing to comply with the District Court's requisitions to elect two members professing the Mussalman faith to the District Wakf Committee under the provisions of section 6-L (c) of the Mussalman Wakf Act, 1923 and rule 21(2) of the rules framed under the Said Act.

2. Section 218(1) of the Bombay Municipal Boroughs Act, 1925 provides that when the Provincial Government is informed on complaint made or otherwise that default has been made in the performance of any duty imposed on a Municipality by or under an enactment for the time being in force, the Provincial Government if satisfied after due enquiry may direct the Commissioner to fix a period for the performance of that duty.

3. Section 6-L (c) ofthe Mussalman Wakf Act, 1923 provides for election to the Wakf Committee of two members in the prescribed manner by the members professing Mussalman faith of each Municipality in the District constituted under the City of Bombay Municipal Act, 1888 or the Bombay Municipal Boroughs Act, 1925.

4. Rule 21(2) of the Bombay Mussalman Wakf Rules, 1936 inter alia provides that the court shall ask the Borough Municipalities in the District to require such members of each such body as progess the Mussalman faith to elect in such manner as the court shall decided their representatives or representative on the Wakf Committee under section 6L(2) and report to it the names of the representatives so elected within a time fixed by it.

5. If these provisions are read together it would appear that a statutory duty is cast by the Waki ules on the Malegaon Municipality to comply with the requisitions of the

urt. The default contemplated by section 218 of the Bombay Municipal Boroughs Act must be a default in the performance of a duty imposed on a Municipality by or under an enactment for the time being inforce. By-laws and statutory rules are usually regarded as forming part of the general law and have when duly made, the same force as the provisions of the Act under which they are made and are liable to be construed with that act as one enactment. Having failed to require the election and to report as required by the statutory rule the Malegaon Municipality has made a default in the performance of the duty imposed under an enactment within the coming of section 218(1) of the Municipal Boroughs Act. The view taken by Revenue Department at paragraph 1 of p. 23 ante is not correct.

6. The next question for consideration is whether under section 61(3) of the Muslaman Vakf Act, 1925 Muslaman members of each borough in a district are entitled to elect two muslim members to the committee or whether the Muslaman members of all the boroughs are to elect two representatives jointly. The words "each municipality" in section 61(2) (c) clearly indicate that Muslaman members of each borough municipality in the district are entitled to elect two representatives to the committee. The view expressed in paragraph 3 of Revenue Department Office note at page 23 ante is correct.

sd/-
Remembrancer of Legal Affairs.

U. S. to G. D. No. 4443, dated the 15th May 1941.

MMB.

Breach of a statutory duty is actionable only if (a) the statute in question imposes a duty on the defendant (b) the duty is towards the plaintiff; (c) the plaintiff sustained damage as a direct consequence of the defendant committing a breach of duty and(d) the damage was such as was contemplated by the statute(vide Ramaswamy Iyer's law of Torts, page 604). In the present case it was no doubt the duty of the Wakf Act, 1923, as amended by Bombay Act XVIII of 1935 to report on the application of Mr. Gandhi referred to it by the Court. The duty however was due to the Court, and not to Mr. Gandhi. Also the damage alleged to have been sustained by Mr. Gandhi could not be a direct but it at all, only a remote consequence of the breach of the statutory duty committed by the Committee, and further more such damage has not been contemplated by the Act. A suit for damages by Mr. Gandhi for the loss alleged to have been suffered by him as a result of wilful default on the part of the President and the Committee members is therefore not likely to be sustained in a court of law. It does not appear that in the present instance Mr. Gandhi is entitled to any redress in a Civil Court merely on the ground that the Wakf Committee failed to submit any report to the District Court, Ahmedabad.

sd/- 16/9

Remembrancer of Legal Affairs.

sd/- 16/9

U. R. to R. D. No. 6210 dated the 18th September, 1941.

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